

MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION

February 21, 2006

The Rhode Island Ethics Commission held its 4th meeting of 2006 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, February 21, 2006, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

James Lynch, Sr., Chair James C. Segovis

Barbara Binder, Vice Chair Ross Cheit

George E. Weavill, Jr., Secretary

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason Gramitt, Staff Attorney/Education Coordinator; Staff Attorney Macall Robertson; and, Commission Investigators Steven T. Cross, Peter J. Mancini, and Michael Douglas.

At approximately 9:05 a.m., the Chair opened the meeting.

The first order of business was to approve the minutes of the Open

Session held on February 7, 2006. Upon motion made by Commissioner Weavill, duly seconded by Commissioner Segovis, it was

VOTED: To approve the minutes of the Open Session held on February 7, 2006.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., and James C. Segovis.

ABSTENTION: Ross Cheit.

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date.

The first advisory opinion was that of Jean Marie Rocha, MPH, RN, the former Director of Nurse Registration and Nursing Education for the Office of Health Professionals Regulation at the Department of Health (DOH). The petitioner was present. Staff Attorney Gramitt presented the Commission Staff recommendation.

In response to Commissioner Binder, the petitioner informed that votes are cast on reporting matters, such as report format, at the monthly meetings on the Reporting Program. She informed that she

could be voting against DOH on a particular matter, but the Director of DOH has the final vote. She related that she acts only in an advisory capacity to DOH regarding this Program. The petitioner stated that the reporting requirement is statutory and is an unfunded mandate. In response to Commissioner Weavill, the petitioner informed that there were several layers of authority between her former position and the Director of DOH. Upon motion made by Commissioner Cheit, duly seconded by Commissioner Segovis, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Jean Marie Rocha, MPH, RN, the former Director of Nurse Registration and Nursing Education for the Office of Health Professionals Regulation at the Department of Health (DOH).

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., James C. Segovis, and Ross Cheit.

The next advisory opinion was that of the Honorable Senator Daniel J. Issa, a legislator serving in the Rhode Island Senate. The petitioner was present with Senate Legal Counsel William Carnes. Staff Attorney Gramitt presented the Commission Staff recommendation.

The petitioner informed that he has had limited contact with AstraZeneca in the past. He mentioned two occasions in which he spoke to them on legislative matters that he was working on for his

constituency. He stated that his constituents would benefit from him attending the conference. He inquired whether he may reimburse the Institute for State Policy Studies for any conference fees, instead of AstraZeneca, if he decides to attend the conference. Staff Attorney Gramitt responded that the petitioner first needs to determine whether or not the Institute is the proper entity to reimburse. The petitioner informed that he allows himself one trip a year related to his legislative service and noted that it is unlikely that he will go to this conference. The petitioner informed that, based upon his research, the Institute is a non-profit, but he is unsure of how it is funded.

In response to Commissioner Binder, Staff Attorney Gramitt stated that this request is different from the opinion previously issued regarding RIASBO because there the main issue was solicitation and here the main issue is the gift regulation. Staff Attorney Gramitt commented that the petitioner wished to proceed with the request because such issues regularly come up among legislators. The petitioner stated that his district has a lot of seniors and that he never wanted to appear like he was doing any favors for the pharmaceutical industry. He stated that he would follow the Commission's advice and exercise extreme caution regarding such opportunities. Upon motion made by Commissioner Segovis, duly seconded by Commissioner Weavill, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Honorable

Senator Daniel J. Issa, a legislator serving the Rhode Island Senate.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., James C. Segovis, and Ross Cheit.

The next advisory opinion was that of Diane S. Nobles, Ph.D., a member of the Narragansett School Committee. The petitioner was present. Staff Attorney Robertson presented the Commission Staff recommendation.

The petitioner asked whether she may extrapolate from this opinion when others matters arise regarding transportation or if she should seek additional advice. She noted that she recently recused from the negotiation of a transportation contract. Staff Attorney Robertson stated that it would be best if the petitioner recused from matters that will financially impact her brother to avoid even an appearance of impropriety. She added that the petitioner should contact the Ethics Commission for specific advice on future matters. Legal Counsel Managhan agreed with the recommendation provided by staff.

Upon motion made by Commissioner Binder, duly seconded by Commissioner Segovis, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Diane S. Nobles, Ph.D., a member of the Narragansett School Committee.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., James C. Segovis, and Ross Cheit.

The next advisory opinion was that of Kim Hapwood, an Assistant Harbormaster for the City of Newport. The petitioner was present. Staff Attorney Gramitt presented the Commission Staff recommendation.

In response to Commissioner Weavill, the petitioner informed that the Newport Waterfront Commission acts an advisory body to the City Council on waterfront matters that include waterfront development, voters' concerns regarding access, and city services. The petitioner informed that the Newport Harbor Master, a full-time position, attends the meetings of the Waterfront Commission. She informed that the Master does not sit on the Commission, but is present to provide information and to make recommendations. In response to Commissioner Weavill, the petitioner informed that she could only think of one situation wherein a conflict may arise regarding the assignment of moorings and stated that she would recuse herself from it. Upon motion made by Commissioner Weavill, duly seconded by Commissioner Binder, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Kim Hapwood, an Assistant Harbormaster for the City of Newport.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr.,

James C. Segovis, and Ross Cheit.

The next advisory opinion was requested by Michael D. Cassidy, the Director of the City of Pawtucket Department of Planning and Redevelopment, on behalf of the Pawtucket Riverfront Commission. The petitioner was present. Commissioner Weavill disclosed that he has a business relationship with the petitioner's son would not impact his participation in this request.

At the outset, Staff Attorney Robertson advised the Commission that Mr. Cassidy requested this opinion on behalf of the Riverfront Commission and that she received a fax by Richard Kazarian, Vice-char of the Waterfront Commission, gave Mr. Cassidy authorization to request this opinion on behalf the Riverfront Commission. She recommended that the opinion be amended to state that the request will be issued in the name of the Vice-Chair, Richard Kazarian. In response to Commissioner Cheit, Staff Attorney Robertson informed that the opinion should be amended in this way because the opinion will impact the members of the Waterfront Commission, not Mr. Cassidy, who is only staff to the Waterfront Commission.

The petitioner informed that the Mayor's 2020 Committee has formed similar subcommittees in the past. He stated that such subcommittees are formed for specific purposes and are later dissolved after their purpose is met. Chair Lynch expressed

concerns that the Commission does not have specific information on the proposed Riverfront Subcommittee. He noted that he has reservations about issuing an opinion before the Subcommittee is formed. In response to Chair Lynch, the petitioner stated that the Subcommittee will comment on projects to develop the riverfront over the next few years.

The petitioner informed that he had additional questions about the official actions of individuals with such simultaneous service. Chair Lynch stated that he would like something in writing regarding the responsibilities of the Subcommittee before considering such issues.

Commissioner Weavill expressed his concern with members of the Waterfront Commission serving on the Subcommittee being unable to present an unbiased opinion on issues handled by the Subcommittee.

The Commissioners pointed out that members simultaneously serving on both public bodies may have to recuse from particular matters before the Waterfront Commission not addressed by the current advisory opinion.

Staff Attorney Robertson noted that this opinion only addresses simultaneous service. She stated that additional issues are not yet ripe and such situations would require the Commission to examine the particular facts. She pointed out that the draft opinion advises individual members to seek additional advice as necessary and states that this opinion is limited.

Commissioner Cheit stated that the petitioner appears to be seeking additional advice and that simultaneous service could present problems in the future. In response to Chair Lynch, Staff Attorney Robertson stated that such issues are premature at this time. Commissioner Segovis suggested tabling the opinion given that the petitioner is seeking additional advice. He stated that while there is no bar to simultaneous service on two public bodies, it appears to be too soon to vote on additional issues given that the Subcommittee has not yet formed.

Legal Counsel Managhan remarked that if the Commission tables the request, it should clarify why the request is being tabled. She suggested that the Commission could wait to hear this request once the Sub-committee is created by a written mandate and when the Vice-Chair can attend the meeting. Commissioner Segovis agreed and made a motion to have this request tabled until the Vice-Chair can come before the Commission with the mandate creating the Sub-committee. Commissioner Cheit seconded this motion. It was unanimously

VOTED: To table the request made by Michael D. Cassidy, the Director of the City of Pawtucket Department of Planning and Redevelopment, on behalf of the Pawtucket Riverfront Commission, until such time that the Commission is provided with the mandate creating the Sub-committee and the Vice-chair of the Waterfront Commission can come before the Commission.

AYES: James Lynch, Sr., Barbara Binder, James C. Segovis, and Ross Cheit.

NOES: George E. Weavill, Jr.

At approximately 10:00 a.m., upon motion was made by Commissioner Binder, duly seconded by Commissioner Kirby, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (a)(4), to wit:

a.) To approve the minutes of Executive Session held on February 7, 2006.

b.) Handrigan v. RIEC, C.A. No. PC05-3759.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., James C. Segovis, and Ross Cheit.

At approximately 10:20 a.m., the Commission returned to Open Session.

The next order of business was a motion to seal minutes of the Executive Session held on February 21, 2006. Upon motion made by

Commissioner Weavill, duly seconded by Commissioner Binder, it was unanimously

VOTED: To seal the minutes of the Executive Session held on February 21, 2006.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., James C. Segovis, and Ross Cheit.

The next order of business was discussion of Commission Regulations. Commissioner Binder informed that Subcommittee B is still collecting information and will likely not meet today as two members are not present. Chair Lynch commented that only Commissioner Cheit and himself have been attending the Subcommittee A meetings. He informed that he had ideas about how to narrow down the choices presented, but did not think it would be fair to do so without the other members participating. He expressed his intent to proceed at the next meeting. Commissioner Weavill inquired whether Chair Lynch wanted the subcommittees to bring forth ideas or specific language and proposed changes. Chair Lynch stated he would like specific language and proposed changes to be presented to the full Commission.

The next order of business was the 2006 Legislative Update. Staff Attorney Gramitt informed the Commission about four bills introduced that may impact the Commission. He presented a

summary of House Bill 7072, which would repeal the Roney Amendment. He informed that this bill has come up before and that the Commission has previously remained neutral on it. He stated that the bill is overbroad and would take out important language in the Code regarding the Commission's procedural requirements to dismiss complaints.

Commissioner Binder suggested that a letter be written informing the committee of the over-breadth of the language and advising that the Commission takes no position on the bill itself. The consensus of the Commission was not to take a position. Staff Attorney Gramitt stated he would draft a letter to committee expressing those concerns.

Staff Attorney Gramitt then presented summaries of Senate Bill 2799 and House Bill 7455, which both relate to the Public Accountability and Reform Act of 2006. The Commission discussed the impact of the amendment to section 36-14-8(f)(4) to prohibit members of the Commission from being the business associate of a registered lobbyist, which does not contain a grandfather provision. The Commissioners expressed concern whether such a requirement would impact any sitting Commissioners. The Commission also commented on the amendment to section 36-14-10 requiring the Commission to provide a program on ethics each year on subjects in the Code of Ethics, as well as lobbying. Staff Attorney Gramitt pointed out that lobbying does not fall under the Commission's jurisdiction or within the expertise. The Commissioners discussed

foreseeable implementation problems with this provision, noting that it does not mandate attendance and there would be a fiscal impact.

Staff Attorney Gramitt reviewed Senate Bill 2798, which would change the appointment process for the Commission and require advice and consent of the Senate. He noted that Operation Clean Government and Common Cause supported this bill. Chair Lynch acknowledged H. Phillip West, Executive Director of Common Cause. Mr. West voiced his concern that the current appointment procedure violates separation of powers and could subject the Commission to court challenges. He pointed out that he discussed the administrative impact of this bill Senior Staff Attorney D'Arezzo so as to avoid impacting any pending complaints. Staff Attorney Gramitt stated that he would provide the Commission with a break down of these various issues and include it in their next packet.

The next order of business was discussion of the vote reporting requirements under the Open Meetings Act. Senior Staff Attorney D'Arezzo presented a summary of the vote reporting requirements and the current practice of the Commission, as outlined in her memorandum.

Commissioner Cheit informed that he did not realize that the specific Executive Session minutes were not sealed. He related that he would favor immediate disclosure of individual votes in Open Session, but stated that he did not want to change the procedures in place at this

time. Commissioner Segovis stated that Commissioner Kirby previously mentioned the value of having a cooling off period before individual executive session votes are disclosed, given difficulties in the past.

The next order of business was the Director's Report. Executive Director Willever reported on the pending complaints and advisory opinions. He related that he invited the new Executive Director of the Connecticut Ethics Commission to visit our office and attend a Commission meeting.

The next order of business was New Business. There was none.

At approximately 11:05 a.m., upon motion made by Commissioner Weavill, duly seconded by Commissioner Segovis, it was unanimously

VOTED: To adjourn the meeting.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., James C. Segovis, and Ross Cheit.

Respectfully submitted,

George E. Weavill, Jr.
Secretary